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HOUSE BILL 362

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO FIREARMS; ENACTING THE HANDGUN SAFETY STANDARD ACT;
ESTABLISHING A COMMISSION; REQUIRING THE COMMISSION TO ADOPT A
PERFORMANCE STANDARD FOR HANDGUNS; PRESCRIBING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Handgun Safety Standard Act".

Section 2. DEFINITIONS.--As used in the Handgun Safety
Standard Act:

A. "antique firearms" means:

(1) a firearm, including any firearm with a
matchlock, flintlock, percussion cap or similar type of
ignition system manufactured in or before 1898; and

(2) a replica of any firearm described in
Paragraph (1) of this subsection if the replica:

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1 (a) is not designed or redesigned for
2 using rimfire or conventional centerfire fixed ammunition; or

3 (b) uses rimfire or conventional
4 centerfire fixed ammunition that is no longer manufactured in
5 the United States and that is not readily available in the
6 ordinary channels of commercial trade;

7 B. "authorized user" means the person who owns the
8 handgun, a person to whom has been given consent to use the
9 handgun by the owner or a person who the owner has enabled to
10 use the handgun;

11 C. "commission" means the handgun standard
12 commi ssi on;

13 D. "grace period" means a period of time, not to
14 exceed one hundred eighty days, that a new resident of this
15 state has to bring a handgun into compliance with the
16 provisions of the Handgun Safety Standard Act;

17 E. "handgun" means a loaded or unloaded pistol,
18 revolver or firearm that will, is designed to or may readily be
19 converted to expel a projectile by the action of an explosion,
20 and the barrel length of which, not including a revolving,
21 detachable or magazine breech, does not exceed twelve inches;

22 F. "handgun manufacturer" means a person engaged in
23 the business of manufacturing handguns for the purpose of sale
24 or distribution;

25 G. "integrated mechanical safety device" means a

1 disabling or locking device that is built into a handgun and
2 that is designed to prevent the handgun from being discharged,
3 unless the device is deactivated by an authorized user.

4 "Integrated mechanical safety device" does not mean a trigger
5 safety lock that is attached to a handgun;

6 H. "pawnbroker" means a person whose business or
7 occupation includes the taking or receiving, by the way of
8 pledge or pawn, of a handgun as security for the payment or
9 repayment of money;

10 I. "person" means an individual, corporation,
11 company, association, firm, partnership, society or joint stock
12 company;

13 J. "personalized handgun" means:

14 (1) a handgun manufactured with an integrated
15 mechanical safety device built into it; or

16 (2) a handgun that has an integrated
17 mechanical safety device built into it following manufacture of
18 the handgun; and

19 K. "seller" means a person:

20 (1) engaged in the business of selling
21 handguns at wholesale or retail;

22 (2) engaged in the business of repairing
23 handguns or of making or fitting special barrels, stocks or
24 trigger mechanisms to handguns; or

25 (3) who is a pawnbroker.

1 Section 3. HANDGUN STANDARD COMMISSION-- CREATION. --

2 A. The "handgun standard commission" shall be
3 established within six months following the passage of the
4 Handgun Safety Standard Act in order to promulgate an
5 appropriate performance standard that responds to the need for
6 the improved safety of handguns.

7 B. The commission shall be composed of nine
8 members, including:

9 (1) two members of the house of
10 representatives appointed by the speaker of the house,
11 including one member of each major political party represented
12 in the house of representatives;

13 (2) two members of the senate appointed by the
14 president pro tempore of the senate, including one member of
15 each major political party represented in the senate;

16 (3) the attorney general or his designee;

17 (4) the chief of the New Mexico state police
18 or his designee;

19 (5) the secretary of health or his designee;

20 (6) a representative of the handgun
21 manufacturing industry appointed by the governor; and

22 (7) a mechanical engineer appointed by the
23 governor.

24 C. Commission members shall be reimbursed pursuant
25 to the provisions of the Per Diem and Mileage Act.

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1 D. Staff services for the commission shall be
2 provided by the attorney general's office.

3 E. The commission shall exist for the period during
4 which the performance standard is promulgated. Once the
5 commission has ceased to exist, the governor, if he deems
6 necessary, may reestablish the commission for a period of time
7 designated by the governor.

8 F. In addition to promulgating a performance
9 standard, the commission shall designate the existing state
10 government agency that will be responsible for administering,
11 advertising, implementing and enforcing the performance
12 standard. The commission's designation of an agency requires
13 approval by the governor.

14 Section 4. PROMULGATION OF A PERFORMANCE STANDARD. --

15 A. On or before one year after the establishment of
16 the commission, the commission shall adopt a handgun
17 performance standard for all handguns manufactured, possessed,
18 sold, offered for sale, traded, transferred, shipped, leased,
19 distributed or acquired within this state. The performance
20 standard shall require, but is not limited to, the following:

21 (1) a personalized handgun must be
22 manufactured so that it can only be fired when operated by that
23 handgun's authorized user; and

24 (2) the technology creating personalized
25 handguns shall be incorporated into the design of the handgun

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1 so that the personalized characteristics cannot be readily
2 deactivated.

3 B. The commission shall formulate the necessary
4 testing procedure to determine if a handgun complies with the
5 commission's performance standard.

6 C. The commission shall designate one or more
7 independent laboratories to determine whether handguns comply
8 with the commission's performance standard. The laboratories
9 shall use the test method formulated by the commission to
10 determine compliance.

11 D. In accordance with the performance standard
12 promulgated by the commission, a handgun manufacturer wishing
13 to manufacture, sell, offer for sale or transfer personalized
14 handguns in the state shall submit a prototype of the
15 personalized handgun model for testing, at the handgun
16 manufacturer's cost, to one of the independent laboratories
17 designated by the commission.

18 E. The laboratory shall issue a report directly to
19 the agency designated by the commission to oversee the
20 administration and implementation of the performance standard
21 and send a copy of the report to the handgun manufacturer
22 indicating whether the submitted personalized handgun met or
23 did not meet the performance standard. If the submitted
24 personalized handgun did not meet the performance standard, the
25 report shall describe the reasons therefor.

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1 F. If the personalized handgun model fails to meet
2 the performance standard, it shall not be manufactured,
3 possessed, sold, offered for sale, traded, transferred,
4 shipped, leased, distributed or acquired by anyone in this
5 state until it has been modified to meet the commission's
6 performance standard and has passed the independent laboratory
7 test on resubmission.

8 G. If the personalized handgun model meets the
9 performance standard, the designated agency shall issue a
10 certificate stating that the personalized handgun model meets
11 the commission's performance standard, and the words "certified
12 personalized handgun" or an equivalent label, as established by
13 the commission, shall be imprinted on the approved personalized
14 handguns at the handgun manufacturer's expense.

15 H. Once the personalized handgun model is deemed to
16 meet the performance standard, the handgun manufacturer, seller
17 or possessor shall not alter the design of the personalized
18 handgun in any manner affecting the safety of the personalized
19 handgun.

20 Section 5. ENFORCEMENT.--

21 A. On or after four years from the date of the
22 adoption of the commission's performance standard, handguns
23 that do not meet the performance standard prescribed by the
24 commission pursuant to the provisions of the Handgun Safety
25 Standard Act shall not be manufactured, possessed, sold,

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1 offered for sale, traded, transferred, shipped, leased,
2 distributed or acquired in this state.

3 B. If any police officer, during the course of
4 official duties and operating within existing constitutional
5 constraints on police searches and seizures, discovers
6 a handgun that does not meet the commission's performance
7 standard and that is not exempt pursuant to Section 6 of the
8 Handgun Safety Standard Act, that officer shall take possession
9 of the handgun. The handgun shall be forfeited to the state in
10 accordance with state law and shall be destroyed.

11 C. The attorney general may bring an action on
12 behalf of the state against sellers, manufacturers or
13 possessors of handguns to enjoin violations of the Handgun
14 Safety Standard Act and for such other relief as may be
15 appropriate.

16 Section 6. EXEMPTIONS.--The following handguns are exempt
17 from the provisions of the Handgun Safety Standard Act:

18 A. antique firearms legally purchased or acquired
19 in accordance with current laws;

20 B. handguns manufactured prior to four years from
21 the date of the adoption of the commission's performance
22 standard. However, such handguns shall not be sold, offered
23 for sale, traded, transferred, shipped, leased or distributed
24 by dealers after four years from the date of the adoption of
25 the commission's performance standard, unless the seller is not

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1 the owner of the handgun and is selling the handgun as the
2 sales agent for a private party;

3 C. handguns purchased for official use by police
4 departments, sheriffs and law enforcement officers and members
5 of the armed forces of the state and the United States;

6 D. handguns possessed by law enforcement officers
7 on official assignment in this state from any state that by
8 agreement permits police officers from this state while on
9 assignment in that state to carry firearms without
10 registration;

11 E. handguns that are a part of the official
12 equipment of a state or federal agency;

13 F. handguns that are inherited by a person pursuant
14 to a will or an intestate proceeding;

15 G. handguns possessed by a nonresident when the
16 nonresident is traveling through this state or if the
17 nonresident is in this state for less than one hundred eighty
18 days; and

19 H. handguns that are covered by the grace period
20 provided to new residents of this state.

21 Section 7. PENALTIES. --

22 A. A person who knowingly violates the provisions
23 of the Handgun Safety Standard Act by manufacturing,
24 possessing, selling, offering for sale, trading, transferring
25 or acquiring a handgun that has not been certified by an

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1 independent testing laboratory as meeting the commission's
2 performance standard, and does not fall within the exemptions
3 stated in the Handgun Safety Standard Act, is guilty of a
4 fourth degree felony and shall be sentenced pursuant to the
5 provisions of Section 31-18-15 NMSA 1978.

6 B. A person who violates the provisions of the
7 Handgun Safety Standard Act by deactivating the personalized
8 characteristics of a personalized handgun manufactured,
9 possessed, sold, offered for sale, traded, transferred,
10 shipped, leased, distributed or acquired after four years from
11 the date of the adoption of the commission's original
12 performance standard is guilty of a misdemeanor and shall be
13 sentenced pursuant to the provisions of Section 31-19-1 NMSA
14 1978.

15 C. The penalties set forth in this section apply to
16 all public and private manufacturers, possessors, sales, offers
17 for sale, trades, transfers, shipments, leases, distributions
18 or acquisitions of handguns.

19 Section 8. LIABILITY. --

20 A. A person who discharges a handgun that does not
21 meet the commission's performance standard, and does not fall
22 within the exemptions stated in the Handgun Safety Standard
23 Act, and thereby causes personal injury to another person,
24 shall be liable for damages that resulted from the handgun not
25 meeting the commission's performance standard.

